

1 KELLY A. JOHNSON
Acting Assistant Attorney General
2 Environment and Natural Resources Division
United States Department of Justice
3 Washington, D.C. 20530

4 ROBERT D. MULLANEY
Trial Attorney, California State Bar # 116441
5 Environment and Natural Resources Division
United States Department of Justice
6 301 Howard Street, Suite 1050
San Francisco, California 94105
7 Telephone: (415) 744-6491

8 MCGREGOR W. SCOTT
United States Attorney
9 E. ROBERT WRIGHT
Assistant United States Attorney
10 Eastern District of California
1130 "O" Street, Room 3654
11 Fresno, California 93721
Telephone: (559) 498-7272
12
13 Attorneys for Plaintiff United States of America

14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

16 UNITED STATES OF AMERICA,)
17)
Plaintiff,)
18)
v.)
19)
SAINT-GOBAIN CONTAINERS, INC.,)
20)
Defendant.)
21 _____)

No. 1:05-CV-00516-REC-SMS

22
23
24
25
26
27
28
CONSENT DECREE

TABLE OF CONTENTS

1		
2		
3	I. <u>JURISDICTION AND VENUE</u>	-1-
4	II. <u>APPLICABILITY</u>	-2-
5	III. <u>DEFINITIONS</u>	-3-
6	IV. <u>CIVIL PENALTY</u>	-6-
7	V. <u>COMPLIANCE REQUIREMENTS</u>	-7-
8	VI. <u>SUPPLEMENTAL ENVIRONMENTAL PROJECT</u>	-19-
9	VII. <u>REPORTING REQUIREMENTS</u>	-22-
10	VIII. <u>STIPULATED PENALTIES</u>	-24-
11	IX. <u>FORCE MAJEURE</u>	-29-
12	X. <u>DISPUTE RESOLUTION</u>	-30-
13	XI. <u>INFORMATION COLLECTION AND RETENTION</u>	-32-
14	XII. <u>EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS</u>	-34-
15	XIII. <u>COSTS</u>	-35-
16	XIV. <u>NOTICES</u>	-35-
17	XV. <u>EFFECTIVE DATE</u>	-36-
18	XVI. <u>RETENTION OF JURISDICTION</u>	-36-
19	XVII. <u>MODIFICATION</u>	-36-
20	XVIII. <u>TERMINATION</u>	-37-
21	XIX. <u>PUBLIC PARTICIPATION</u>	-37-
22	XX. <u>SIGNATORIES/SERVICE</u>	-37-
23	XXI. <u>INTEGRATION</u>	-38-
24	XXII. <u>FINAL JUDGMENT</u>	-38-
25	XXIII. <u>APPENDICES</u>	-38-

1 Concurrently with the lodging of this Consent Decree, Plaintiff United States of
2 America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a
3 Complaint in this action pursuant to Section 113 of the Clean Air Act (the “Act”), 42 U.S.C.
4 § 7413, alleging that Defendant Saint-Gobain Containers, Inc. (“Defendant” or “SGCI”) violated
5 the Act at its glass manufacturing facility in Madera, California (the “Facility”).

6 The Complaint alleges that Defendant modified Furnace #2 at its Facility in
7 December 1998 without complying with the Prevention of Significant Deterioration of Air
8 Quality (“PSD”) requirements of the Act. Moreover, the Complaint alleges that Defendant failed
9 to install and operate a Continuous Emissions Monitoring System (“CEMS”) on Furnace #1 at
10 the Facility, failed to conduct source tests at Furnaces #1 and #2, and submitted invalid
11 compliance certifications for Furnaces #1 and #2.

12 Defendant denies any liability to the United States arising out of the transactions
13 or occurrences alleged in the Complaint.

14 The Parties recognize, and the Court by entering this Consent Decree finds, that
15 this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
16 between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

17 NOW, THEREFORE, before the taking of any testimony, without the
18 adjudication or admission of any issue of fact or law except as provided in Section I below, and
19 with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as
20 follows:

21 I. JURISDICTION AND VENUE

22 1. This Court has jurisdiction over the subject matter of this action, pursuant
23 to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and
24 over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), and 28 U.S.C.
25 §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint occurred in, and
26 Defendant conducts business in, this judicial District. For purposes of this Decree, or any action
27 to enforce this Decree, Defendant consents to the Court’s jurisdiction over this Decree or such
28 action and over Defendant, and consents to venue in this judicial District.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Act.

3. Notice of the commencement of this action has been given to the State of California, as required by Section 113(b) of the Act.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. Any transfer of ownership or operation of the Facility to any other person must be conditioned upon the transferee's agreement: (i) to subject itself to the jurisdiction of this Court as the defendant in this Consent Decree, and (ii) to perform all remaining obligations of SGCI required by this Decree, as provided in a written agreement between SGCI and the proposed transferee, enforceable by the United States as a third-party beneficiary of such agreement. At least 30 days prior to such transfer, SGCI shall provide a copy of this Consent Decree to the proposed transferee. At least 15 days prior to such transfer, SGCI shall provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States, in accordance with Section XIV (Notices) of this Decree. If Defendant attempts to transfer ownership or operation of the Facility without complying with this Paragraph, it shall constitute a violation of this Decree. Defendant shall remain obligated to ensure that the terms of the Decree are implemented until: (1) Defendant has paid the civil penalty as required by Section IV (Civil Penalty); (2) with respect to operations by SGCI prior to transfer of ownership or operation of the Facility, Defendant has either paid any accrued stipulated penalties owed to the United States pursuant to Section VIII (Stipulated Penalties) or any disputes relating to stipulated penalties have been resolved pursuant to Section X (Dispute Resolution); and (3) the transferee is substituted by the Court as a defendant under this Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include compliance with any provision of this Decree, as

1 well as to any contractor retained to perform on-site repair, installation, construction, rebuilding
2 or maintenance work required under this Consent Decree. Defendant shall include the provisions
3 of Appendix B in any such contract.

4 7. In any action to enforce this Consent Decree, Defendant shall not raise as a
5 defense the failure by any of its officers, directors, employees, agents, or contractors to take any
6 actions necessary to comply with the provisions of this Consent Decree.

7 III. DEFINITIONS

8 8. Terms used in this Consent Decree that are defined in the Act or in
9 regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act
10 or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth
11 below are used in this Consent Decree, the following definitions shall apply:

12 a. "Block 24-hour Average" shall mean the arithmetic average of the
13 hourly nitrogen oxides ("NO_x") (measured as nitrogen dioxides ("NO₂")) emission rates divided
14 by the hourly pull rate of glass (in tons) of a furnace as measured over 24 one-hour periods, or a
15 fraction thereof when less than 24 one-hour periods are available, daily, from 12:00 a.m. to 11:59
16 p.m., excluding periods of CEMS and Continuous Emissions Rate Monitoring System
17 ("CERMS") calibration and emissions monitoring malfunction;

18 b. "Block 24-hour Period" shall mean the sum of the hourly NO_x
19 (measured as NO₂) emission rates of a furnace as measured over 24 one-hour periods, or a
20 fraction thereof when less than 24 one-hour periods are available, daily, from 12:00 a.m. to 11:59
21 p.m., excluding periods of CEMS and CERMS calibration and emissions monitoring
22 malfunction;

23 c. "Cease Operations" shall mean that: (i) on or before December 31,
24 2006, SGCI decides not to replace Furnace #2 and to produce no more glass from Furnace #2 or
25 any replacement for Furnace #2, or (ii) at any time after the permanent termination of operation
26 of Furnace #2 and its replacement with the Oxy-fuel Furnace, SGCI decides to produce no more
27 glass from the Oxy-fuel Furnace.

28 d. "Commence Construction" shall mean that SGCI has all necessary

1 final preconstruction approvals or permits and either has: (i) begun, or caused to begin, a
2 continuous program of actual on-site construction of the source, to be completed within a
3 reasonable time; or (ii) entered into binding agreements or contractual obligations, which cannot
4 be cancelled or modified without substantial loss to SGCI, for major pieces of equipment
5 required for the actual construction of the source to be completed within a reasonable time.

6 e. "Complaint" shall mean the Complaint filed by the United States
7 in this action;

8 f. "Consent Decree" or "Decree" shall mean this Decree and
9 Appendices A and B attached hereto;

10 g. "Cullet" shall mean waste or broken glass, which is suitable for
11 remelting as an addition to a new batch. Cullet includes post-consumer recycled glass and waste
12 glass produced by the Facility;

13 h. "Daily Average Concentration" shall mean the arithmetic average
14 of the hourly sulfur dioxide ("SO₂") concentration (in parts per million on a dry volume basis
15 ("ppmdv")) measured over 24 one-hour periods, or a fraction thereof when less than 24 one-hour
16 periods are available, daily, from 12:00 a.m. to 11:59 p.m., excluding periods of CEMS
17 calibration and emissions monitoring malfunction;

18 i. "Day" shall mean a calendar day unless expressly stated to be a
19 working day. In computing any period of time under this Consent Decree, where the last day
20 would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of
21 business of the next working day;

22 j. "Defendant" shall mean Saint-Gobain Containers, Inc.;

23 k. "District" or "SJVUAPCD" shall mean the San Joaquin Valley
24 Unified Air Pollution Control District and any of its successor agencies;

25 l. "EPA" shall mean the United States Environmental Protection
26 Agency and any of its successor departments or agencies;

27 m. "Facility" shall mean Defendant's container glass manufacturing
28 facility located in Madera, California;

1 n. “Furnace #1” and “Furnace #2” shall mean the existing furnaces at
2 the Facility denoted by SJVUAPCD source numbers C-801-1 and C-801-2. Furnace #1 and
3 Furnace #2 are regenerative glass melting furnaces with a current melter area of 1,200 and 1,320
4 square feet, respectively;

5 o. “Fused Cast Crown” shall mean either a fused cast alumina or
6 fused cast alumina-zirconia-silica refractory in the crown section of the Oxy-fuel Furnace;

7 p. “Idling” shall mean a period when the glass pull rate is less than
8 110 tons of glass pulled per day for Furnace #2 or when the operation of the Oxy-fuel Furnace is
9 at less than 25 percent of the Permitted Production Capacity;

10 q. “Malfunction” shall mean a sudden and unavoidable failure or
11 breakdown of air pollution control equipment that: (i) is caused by circumstances beyond the
12 control of the owner and/or operator; (ii) is not the result of intent, neglect, or disregard of air
13 pollution control laws, rules or regulations; (iii) is not the result of improper maintenance; and
14 (iv) is not an excessively recurrent breakdown of the same equipment.

15 r. “NOx” shall mean the sum of oxides of nitrogen in the flue gas,
16 collectively expressed as NO₂;

17 s. “Oxy-fuel Furnace” shall mean the oxygen-fuel furnace that SGCI
18 installs and operates pursuant to this Decree to replace Furnace #2. The Oxy-fuel Furnace will
19 be a glass melting furnace in which an enriched oxygen stream provides the oxidant for
20 combustion of the fuel. The Oxy-fuel Furnace may exceed the 1,320 square feet size of Furnace
21 #2 and may support additional glass container production through additional glass-forming
22 machines;

23 t. “Paragraph” shall mean a portion of this Decree identified by an
24 Arabic numeral;

25 u. “Parties” shall mean the United States and Defendant;

26 v. “Permitted Production Capacity” shall mean the production
27 capacity in tons of glass pulled per day for the Oxy-fuel Furnace as stated in the Permit to
28 Operate for the Oxy-fuel Furnace.

1 w. "Project Costs" shall mean all costs incurred pursuant to this
2 Consent Decree to purchase equipment, the costs of labor and materials for installing that
3 equipment, costs for site preparation and buildings, costs for land, working capital, and off-site
4 facilities. Project Costs shall include costs for foundations and supports, erecting and handling
5 the equipment, electrical work, piping, insulation, painting, as well as engineering costs;
6 construction and field expenses (such as costs for construction supervisory personnel, office
7 personnel, rental of temporary offices, etc.); contractor and consulting fees (including, but not
8 limited to, construction and engineering firms involved in the project); and Start-up and
9 performance test costs (to get the system running and to verify that it meets performance
10 guarantees).

11 x. "Section" shall mean a portion of this Decree identified by a
12 Roman numeral;

13 y. "Shutdown" shall mean the period of time during which a glass
14 melting furnace is purposely allowed to cool from its operating temperature and molten glass is
15 removed from the tank for the purpose of a furnace rebuild or reconstruction, or during a natural
16 gas curtailment, or, subject to EPA's approval, when it is commercially necessary;

17 z. "Start-up" shall mean the period of time, after initial construction,
18 a furnace rebuild, or a Shutdown, during which a glass melting furnace is heated to operating
19 temperature by the primary furnace combustion system, and systems and instrumentation are
20 calibrated; and

21 aa. "Transition" shall mean a period of no more than 24 hours in
22 duration when the operations of the Oxy-fuel Furnace is at less than 50 percent but more than 25
23 percent of the Permitted Production Capacity.

24 bb. "United States" shall mean the United States of America, acting on
25 behalf of EPA.

26 IV. CIVIL PENALTY

27 9. Within 5 business days after Defendant receives notice from the United
28 States that this Consent Decree has been lodged, Defendant shall deposit the sum of \$929,000 as

a civil penalty into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the “Escrow Account”). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court’s denial of entry is upheld on appeal, the money placed in escrow, together with accrued interest thereon, shall be returned to Defendant. If the Consent Decree is entered by the Court, Defendant shall, within 10 days after Defendant receives notice from the United States thereof, cause the money placed in the Escrow Account, together with accrued interest thereon, to be paid to the United States as a civil penalty. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of California. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-2-1-06982 and the civil action number of this case) to the United States in accordance with Section XIV (Notices) of this Decree.

10. Defendant shall not deduct the civil penalty of \$929,000, together with accrued interest thereon, paid under this Section in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

11. Compliance Plan for Furnace #2. In order to control nitrogen oxides (“NOx”), sulfur oxides (“SOx”), and particulate emissions at the Facility, SGCI shall comply with the following compliance plan:

a. Permanent termination of operation of Furnace #2. SGCI shall permanently terminate the operation of, and produce no more glass from, Furnace #2 on or before December 31, 2006. Furnace #2 must be removed from the Facility before operation of the Oxy-fuel Furnace.

b. Installation of Oxy-fuel Furnace.

i. Within 30 days after the Effective Date, SGCI shall submit an application to the appropriate permitting authority for a preconstruction permit for an Oxy-fuel Furnace to replace Furnace #2. In the application, SGCI shall propose a Permitted

1 Production Capacity for the Oxy-fuel Furnace and shall propose the requirements specified in
2 Paragraphs 12, 13, and 14.

3 ii. SGCI shall notify EPA pursuant to Section XIV (Notices)
4 of this Consent Decree not more than 10 calendar days after it submits a preconstruction permit
5 application and shall include a copy of the permit application submitted to the permitting
6 authority, if the permitting authority is not EPA.

7 iii. SGCI shall notify EPA pursuant to Section XIV (Notices)
8 of this Consent Decree when SGCI receives a preconstruction permit for the replacement of
9 Furnace #2 with the Oxy-fuel Furnace and for the installation of the scrubber and ESP on
10 Furnace #1 and the Oxy-fuel Furnace. The notification shall be postmarked not more than 10
11 calendar days after SGCI receives the preconstruction permit and shall include a copy of the
12 preconstruction permit issued by the permitting authority, if the permitting authority is not EPA.

13 iv. Unless EPA agrees in writing to relieve SGCI of the
14 obligation, in whole or in part, of this Paragraph 11.b.iv., SGCI agrees that it will not accept, and
15 will appeal, a preconstruction permit issued by the permitting authority that does not include
16 permit conditions at least as stringent as those proposed in the preconstruction permit application
17 described in Paragraph 11.b.i. Under these circumstances, all deadlines in this Consent Decree
18 related to construction and operation of the Oxy-fuel Furnace shall be stayed pending the final
19 outcome of any such appeal.

20 v. Unless the preconstruction permit does not include permit
21 conditions at least as stringent as those proposed in the preconstruction permit application
22 described in Paragraph 11.b.i., SGCI shall Commence Construction on the Oxy-fuel Furnace
23 within 30 days after receiving a final preconstruction permit from the permitting authority.

24 vi. SGCI shall complete construction of, and shall begin
25 operating, the Oxy-fuel Furnace by March 1, 2007.

26 vii. Except as provided in Paragraph 11.b.viii., for purposes of
27 this Consent Decree and any other issue related to the emission reductions resulting from the
28 permanent termination of operation of Furnace #2, the parties stipulate that NOx emission

1 reductions from the permanent termination of operation of Furnace #2 that exceed 104 tons per
2 year (“tpy”) shall not be treated as actual emission reductions, but shall be treated as reductions
3 that are not surplus emission reductions in excess of emission reductions required by law, and
4 therefore are not eligible for conversion to Emission Reduction Credits (“ERCs”).

5 viii. Solely for the purposes of a netting calculation for the
6 permitting of the Oxy-fuel Furnace, the NOx “baseline emissions,” as defined in SJVUAPCD
7 Rule 2201, Section 3.7 (approved by EPA on May 17, 2004, see 69 Fed. Reg. 27,837), shall not
8 exceed 1.3 pounds of NOx per ton of glass pulled times the Permitted Production Capacity.

9 c. Cease Operations.

10 i. SGCI reserves the right to Cease Operations at any time. If
11 SGCI decides to Cease Operations, SGCI shall, within 10 days after reaching its decision, notify
12 EPA and the United States pursuant to Section XIV (Notices) of this Consent Decree. The
13 notification shall state the date that SGCI plans to Cease Operations.

14 ii. If SGCI decides to Cease Operations and not to construct
15 and operate the Oxy-fuel Furnace, SGCI: (a) shall be subject to stipulated penalties pursuant to
16 Paragraph 35 below, and (b) shall not use any emission reductions resulting from the permanent
17 termination of operation of Furnace #2 to either apply for or obtain ERCs, or as reductions in any
18 netting calculation.

19 d. SGCI shall notify EPA pursuant to Section XIV (Notices) of this
20 Consent Decree of the date on which SGCI is in compliance with Paragraph 11.a., 11.b.v., and
21 11.b.vi. The notification shall be postmarked not more than 10 calendar days after such dates.

22 12. Requirements for Oxy-fuel Furnace, Scrubber, and ESP. Throughout the
23 life of the Oxy-fuel Furnace, SGCI shall comply with the following requirements:

24 a. SGCI shall install, operate, and maintain an Oxy-fuel Furnace to
25 control NOx in accordance with the following requirements:

26 i. Emissions of NOx shall not exceed 1.3 pounds per ton of
27 glass pulled, as calculated on a Block 24-Hour Average and determined by the NOx and flow
28 monitoring described in Paragraph 13.

1 ii. The emission limit in Subparagraph 12.a.i. shall not apply
2 during periods of Idling, Transition, Start-up, or Shutdown.

3 iii. SGCI shall install, maintain, and operate the Oxy-fuel
4 Furnace such that the combustion oxidant is at least 90 percent oxygen.

5 iv. SGCI shall install, operate, and maintain staged combustion
6 low NOx oxy-fuel burners on the Oxy-fuel Furnace.

7 v. SGCI shall install a Fused Cast Crown on the Oxy-fuel
8 Furnace. SGCI shall maintain the Fused Cast Crown for the life of the Oxy-fuel Furnace unless
9 SGCI can show, at the time of any necessary repairs to the Fused Cast Crown, that the Fused
10 Cast Crown has proven technically or economically infeasible to maintain. Within 10 days of its
11 decision to remove the Fused Cast Crown, SGCI shall notify EPA pursuant to Section XIV
12 (Notices) of this Consent Decree of its decision and shall provide the basis for its decision.

13 b. SGCI shall install, operate, and maintain a scrubber system to
14 reduce SOx emissions by at least 85 percent ("Reduction Efficiency"), excluding days when the
15 scrubber inlet's Daily Average Concentration of SO₂ is 353 ppmdv or less, in which case the
16 scrubber outlet's Daily Average Concentration of SO₂ shall be reduced to at least 53 ppmdv
17 ("Daily Concentration Standard"). The averaging period for the Reduction Efficiency shall be
18 calculated on a rolling 30-day average basis, excluding days when the scrubber inlet's Daily
19 Average Concentration of SO₂ is 353 ppmdv or less.^{1/} Compliance with the SOx Reduction
20 Efficiency and Daily Concentration Standard shall be demonstrated by scrubber inlet and outlet
21 SO₂ continuous concentration monitoring as specified in Paragraph 13.

22 c. SGCI shall install, operate, and maintain an electrostatic
23 precipitator ("ESP") to control particulate emissions in accordance with the following
24 requirements:

25
26 ^{1/}The calculation of the rolling 30-day average may require more than 30 scrubber operating days.
27 For example, if the scrubber inlet's Daily Average Concentration of SO₂ is less than 353 ppmdv for
28 three days during a continuous 30-day period, then the calculation of the rolling 30-day average will
require an additional three days or a total of 33 operating days (i.e., 30 days that are subject to the
Reduction Efficiency standard and 3 days that are subject to the Daily Concentration Standard).

1 i. Particulate emissions shall be controlled to at least: (1) 0.2
2 pounds of particulate per ton of glass pulled, using EPA Method 5 as set forth in 40 C.F.R. Part
3 60, Appendix A; and (2) 0.45 pounds of particulate per ton of glass pulled, using the combined
4 results of EPA Methods 5 and 202 as set forth in 40 C.F.R. Part 60, Appendix A.

5 d. SGCI shall operate the Oxy-fuel Furnace for at least one year after
6 SGCI has demonstrated compliance by initial compliance testing with the SO_x Reduction
7 Efficiency, particulate emission limits, and NO_x emission limit established in this Consent
8 Decree.

9 e. Start-Up Requirements for Oxy-fuel Furnace. SGCI shall submit a
10 request for a Start-up exemption to the permitting authority in conjunction with the
11 preconstruction permit application for the Oxy-fuel Furnace.

12 i. The actual length of the Start-up exemption shall be
13 determined by the permitting authority at the time of preconstruction permit issuance, but in any
14 case it shall not exceed 70 days. The Start-up exemption shall begin upon activation of the
15 primary combustion system.

16 ii. SGCI shall submit to the permitting authority any
17 information deemed necessary by the permitting authority to determine the appropriate length of
18 the Start-up exemption. This information shall include, but may not be limited to, a detailed list
19 of activities to be performed during Start-up, an explanation for the length of time needed to
20 complete each activity, and a description of the material process flow rates and system operating
21 parameters that SGCI plans to evaluate during the Start-up.

22 iii. The length of the Start-up exemption, if any, will be
23 determined at the discretion of the permitting authority. The permitting authority will approve a
24 Start-up exemption only to the extent that SGCI's submittal identifies the control technologies or
25 strategies to be utilized, describes what physical conditions prevail during Start-up periods that
26 prevent the controls from being effective, and provides a precise estimate as to when physical
27 conditions will have reached a state that allows for the effective control of emissions.

28 iv. During the Start-up period, the stoichiometric ratio of the

1 primary furnace combustion system shall not exceed 5 percent excess oxygen, as calculated from
2 the actual fuel and oxidant flow measurements for combustion in the glass melting furnace.

3 v. During the Start-up period, the emission control systems
4 shall be in operation as soon as technologically feasible to minimize emissions.

5 f. Shutdown Requirements for Oxy-fuel Furnace.

6 i. The duration of a Shutdown, as measured from the time the
7 furnace production level drops below the Idling threshold to the time when all emissions from
8 the furnace cease, shall not exceed 20 days.

9 ii. The emission control systems shall be in operation
10 whenever technologically feasible during Shutdown to minimize emissions.

11 g. Idling and Transition Requirements for Oxy-fuel Furnace.

12 i. During Idling and Transition, NO_x emissions from the
13 Oxy-fuel Furnace (calculated as a Block 24-hour Period) shall not exceed 1.3 pounds of NO_x per
14 ton of glass pulled times the Permitted Production Capacity. (For example, if the Permitted
15 Production Capacity is 540 tons of glass pulled per day, the daily NO_x emissions shall not
16 exceed 702 pounds per day.) NO_x emissions shall be determined by the NO_x and flow
17 monitoring described in Paragraph 13.

18 ii. When Idling or a Transition occurs for less than 24 hours in
19 a day, the NO_x emissions limit in Paragraph 12.g.i shall apply and NO_x emissions from 12:00
20 a.m. through 11:59 p.m. on that day shall be included in the calculation of the total daily NO_x
21 emissions.

22 iii. The Oxy-fuel Furnace shall have no more than six
23 Transitions during any calendar year. Once a Transition begins, production must exceed 50
24 percent of the Permitted Production Capacity or be less than 25 percent of the Permitted
25 Production Capacity for at least 24 hours before another Transition can be initiated.

26 iv. The emission control systems shall be in operation
27 whenever technologically feasible during Idling and Transition to minimize emissions.

28 v. Scheduled or preventive maintenance of the emission

1 control systems shall occur only during Idling or after Shutdown.

2 h. Malfunction Requirements. When a Malfunction of the Oxy-fuel
3 Furnace or any of the air pollution equipment occurs, SGCI shall attempt to repair the
4 Malfunction as soon as practicable, but in no event longer than 12 hours. Off-shift labor and
5 overtime must be utilized, to the extent practicable, to ensure that such repairs are made
6 expeditiously. If after 12 hours, the Malfunction is not corrected, the Oxy-fuel Furnace must be
7 taken to Idling within 12 additional hours.

8 13. Oxy-fuel Furnace Emissions Testing and Monitoring.

9 a. The open hood stack exhaust system for Furnace #1 shall be
10 eliminated by March 1, 2007. The new exhaust system(s) for Furnace #1 and the Oxy-fuel
11 Furnace shall be designed, installed, and maintained according to good engineering practices,
12 including minimizing dilution air in the stack exhaust stream prior to measurement of opacity.

13 b. Initial Compliance Testing. Within 60 days after achieving 60
14 percent of the Permitted Production Capacity, but no later than 180 days after the commencement
15 of the Start-up period of the Oxy-fuel Furnace, SGCI shall demonstrate compliance with: (1) the
16 SOx Reduction Efficiency; (2) the particulate emission limits; and (3) the NOx emission limit.
17 The Continuous Opacity Monitoring System ("COMS") shall also be certified in the initial
18 compliance testing period.

19 i. The initial compliance testing for the SOx Reduction
20 Efficiency shall be performed using an inlet and outlet SO₂ monitoring system that has met the
21 requirements of Performance Specification 2 in 40 C.F.R. Part 60, Appendix B. The SO₂
22 monitoring system shall meet the quality assurance requirements of 40 C.F.R. Part 60, Appendix
23 F.

24 ii. Compliance testing for particulate shall be conducted in
25 accordance with EPA Reference Methods 1, 2, 5, and 202 as set forth in 40 C.F.R. Part 60,
26 Appendix A. Each test shall consist of three runs. The sampling time and volume for each run
27 shall be at least 60 minutes and 31.8 dry standard cubic feet. Thereafter, compliance testing of
28 particulate matter shall be conducted on an annual basis within 60 days of the anniversary date of

1 the latest compliance testing.

2 iii. The initial compliance testing for NO_x shall be
3 demonstrated by a NO_x CERMS that has met the requirements of Performance Specification 6 in
4 40 C.F.R. Part 60, Appendix B. NO_x monitoring systems shall meet the quality assurance
5 requirements of 40 C.F.R. Part 60, Appendix F.

6 iv. Certification of the COMS shall be demonstrated by
7 meeting the requirements of 40 C.F.R. § 60.13 and 40 C.F.R. Part 60, Appendix B, Performance
8 Specification 1.

9 c. Continuous Emission Monitoring. To show compliance with the
10 NO_x emission limit for the Oxy-fuel Furnace, SGCI shall measure the NO_x emissions from the
11 Oxy-fuel Furnace separately from emissions from Furnace #1. After Start-up of the Oxy-fuel
12 Furnace, SGCI shall maintain and operate: (1) a CEMS for O₂, CO, and NO_x in the Furnace #1
13 exhaust stream; (2) a CERMS in the Oxy-fuel Furnace exhaust stream; and (3) a COMS in the
14 combined Oxy-fuel Furnace and Furnace #1 exhaust stream; and (4) a SO₂ CEMS at the inlet and
15 outlet of the scrubber as follows:

16 i. CEMS to measure stack gas O₂, CO, and SO₂
17 concentrations. The CEMS shall meet the requirements of 40 C.F.R. § 60.13, 40 C.F.R. Part 60,
18 Appendix B (Performance Specifications 2, 3, and 4), and 40 C.F.R. Part 60, Appendix F
19 (Quality Assurance Procedures).

20 ii. CERMS to measure NO_x emission rates. The CERMS
21 shall meet the requirements of 40 C.F.R. Part 60, Appendix B, Performance Specification 6 and
22 40 C.F.R. Part 60, Appendix F (Quality Assurance Procedures).

23 iii. The COMS shall meet the requirements of 40 C.F.R.
24 § 60.13 and 40 C.F.R. Part 60, Appendix B, Performance Specification 1.

25 iv. Monitoring of the ESP shall comply with the requirements
26 of 40 C.F.R. Part 64.

27 d. Determination of NO_x Emission Rate. The NO_x emission rate
28 measured by the CERMS in pounds per hour shall be converted to pounds of NO_x per ton of

glass pulled according to the following equation:

$$NO_x \text{ Emission Rate} \left(\frac{\text{pounds } NO_x}{\text{ton glass pulled}} \right) = \left(\frac{NO_x \text{ CERMS} \left(\frac{\text{pounds } NO_x}{\text{hour}} \right)}{\text{glass pull rate} \left(\frac{\text{ton glass pulled}}{\text{hour}} \right)} \right)$$

14. Recordkeeping and Reporting for the Oxy-fuel Furnace. SGCI shall maintain the following information recorded in a permanent form, which may include electronic files, suitable for inspection:

a. A file of all continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by 40 C.F.R. Part 60, Appendices A, B, and F;

b. Operating logs that contain the following data on a daily basis: hours of operation, glass pull rate (in tons of glass pulled), type and quantity of fuel used, NO_x emissions (in pounds of NO_x per ton of glass pulled, calculated on a Block 24-hour Average), percent Cullet used, electric boost used (in kilowatt-hours ("KWH")), oxygen quantity, and oxygen content of the combustion oxidant for the Oxy-fuel Furnace. The logs shall indicate periods of Idling, Transition, Start-up, and Shutdown, as well as any periods of maintenance, repair or Malfunction that affect the levels of emissions. This information, including all electronic files, shall be recorded and maintained until the Oxy-fuel Furnace is rebuilt, reconstructed, or Ceases Operation.

c. During Idling and Transition periods: A log that includes the following data on a daily basis: hours in Idling or Transition, glass pull rate (in tons of glass pulled), and pounds of NO_x emitted (calculated as a Block 24-hour Period).

d. Within 30 days after the end of each calendar-year quarter (*i.e.*, by April 30, July 30, October 30, and January 30), Defendant shall submit to EPA and the District a "Quarterly Excess Emissions, CERMS, CEMS, and COMS Report" that conforms to the format

1 set forth in 40 C.F.R. § 60.7(c) and includes the following:

2 i. the magnitude of excess emissions, computed in
3 accordance with 40 C.F.R. § 60.13(h), any conversion factors(s) used, and the date and time of
4 commencement and completion of each time period of excess emissions;

5 ii. specific identification of each period of excess emissions
6 that occur during Idling, Start-ups, Shutdowns, and Malfunctions, together with the nature and
7 cause of any Malfunction (if known) and the corrective action taken or preventative measures
8 adopted;

9 iii. the date and time identifying each period during which the
10 continuous monitoring system was inoperative (except for zero and span checks) and the nature
11 of the system repairs or adjustments; and

12 iv. when no excess emissions have occurred or the continuous
13 monitoring system has not been inoperative, repaired, or adjusted, such information shall be
14 stated in the report.

15 e. SGCI shall notify EPA pursuant to Section XIV (Notices) of this
16 Consent Decree of the date on which SGCI plans to conduct initial compliance testing required
17 by Paragraph 13.b. The notification shall be postmarked not less than 30 calendar days prior to
18 such date.

19 f. SGCI shall notify EPA pursuant to Section XIV (Notices) of this
20 Consent Decree of the date on which SGCI has conducted the initial compliance testing required
21 by Paragraph 13.b. The notification shall be postmarked not more than 60 calendar days after
22 such date and shall include a copy of the compliance testing report. If the compliance testing
23 report is not available at the time of notification, SGCI shall provide a copy of the report to EPA
24 within 10 days after receiving it.

25 15. Interim Requirements for Furnace #2. Beginning on the Effective Date
26 and continuing until the permanent termination of operation of Furnace #2, SGCI shall comply
27 with the following requirements for Furnace #2:

28 a. From May 1 through October 31 of each year, emissions shall not

1 exceed 3.7 pounds of NOx per ton of glass pulled, as calculated on a Block 24-Hour Average and
2 determined by the NOx monitoring specified in subparagraph c; from November 1 through April
3 30 of each year, emissions shall not exceed 3.8 pounds of NOx per ton of glass pulled, as
4 calculated on a Block 24-Hour Average and determined by the NOx monitoring specified in
5 subparagraph c; provided, however, that these emission limits shall not apply during periods of
6 Idling, Start-up, or Shutdown.

7 b. During Idling, NOx emissions from Furnace #2 shall not exceed
8 1,650 pounds per day (calculated as a Block 24-hour Period) as determined by the NOx
9 monitoring specified in subparagraph c. When Idling occurs for less than 24 hours in a day, the
10 NOx emissions limit in this subparagraph shall apply and NOx emissions from 12:00 a.m.
11 through 11:59 p.m. on that day shall be included in the calculation of the total daily NOx
12 emissions.

13 c. SGCI shall maintain and operate a CEMS in the Furnace #2
14 exhaust stack to measure O₂, NOx, and CO concentrations. The system shall meet the
15 requirements of 40 C.F.R. § 60.13, 40 C.F.R. Part 60, Appendix B (Performance Specifications
16 2, 3, and 4), and 40 C.F.R. Part 60, Appendix F (Quality Assurance Procedures).

17 d. Recordkeeping. Throughout the operating life of Furnace #2 and
18 for a five-year period thereafter, SGCI shall maintain the following information recorded in a
19 permanent form, which may include electronic files, suitable for inspection:

20 i. A file of all continuous monitoring system, monitoring
21 device, and performance testing measurements; all continuous monitoring system performance
22 evaluations; all continuous monitoring system or monitoring device calibration checks;
23 adjustments and maintenance performed on these systems or devices; and all other information
24 required by 40 C.F.R. Part 60, Appendices A, B, and F;

25 ii. Operating logs that include on a daily basis: hours of
26 operation, glass pull rate (in tons of glass pulled), type and quantity of fuel used, NOx emissions
27 (in pounds of NOx per ton of glass pulled, calculated on a Block 24-hour Average), percent
28 Cullet used, and electric boost used (in KWH). The logs shall indicate periods of Idling and

1 Shutdown, as well as any periods of maintenance, repair or Malfunction that affect the levels of
2 emissions; and

3 iii. During Idling periods, SGCI shall maintain the following
4 information, recorded in a permanent form suitable for inspection, in an operating log that
5 includes on a daily basis: hours in Idling, glass pull rate (in tons of glass pulled), and pounds of
6 NOx emitted (calculated as a Block 24-hour Period).

7 e. Reporting. Within 30 days after the end of each calendar-year
8 quarter (*i.e.*, by April 30, July 30, October 30, and January 30), Defendant shall submit to EPA
9 and the District a “Quarterly Excess Emissions and CEMS Report” that conforms to the format
10 set forth in 40 C.F.R. § 60.7(c) and includes the following:

11 i. the magnitude of excess emissions, computed in
12 accordance with 40 C.F.R. § 60.13(h), any conversion factors(s) used, and the date and time of
13 commencement and completion of each time period of excess emissions;

14 ii. specific identification of each period of excess emissions
15 that occur during Idling, Shutdowns, and Malfunctions, together with the nature and cause of any
16 Malfunction (if known) and the corrective action taken or preventative measures adopted;

17 iii. the date and time identifying each period during which the
18 continuous monitoring system was inoperative (except for zero and span checks) and the nature
19 of the system repairs or adjustments; and

20 iv. when no excess emissions have occurred or the continuous
21 monitoring system has not been inoperative, repaired, or adjusted, such information shall be
22 stated in the report.

23 16. Permits. When any compliance obligation under this Section requires
24 Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely
25 applications and timely provide additional information as requested by the permitting authority to
26 make its applications complete, and take all other actions necessary to obtain all such permits or
27 approvals. Defendant may seek relief under the provisions of Section IX (Force Majeure) of this
28 Consent Decree for any delay in the performance of any such obligation resulting from a failure

1 to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if
2 Defendant has submitted timely and complete applications and has taken all other actions
3 necessary to obtain all such permits or approvals.

4 VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

5 17. Defendant shall implement a Supplemental Environmental Project
6 (“SEP”) requiring installation of a scrubber and ESP to control SO_x and particulate emissions
7 from Furnace #1 at the Facility, in accordance with the following requirements:

8 a. The scrubber system shall reduce SO_x emissions from Furnace #1
9 as specified in Paragraph 12.b. Initial compliance testing shall comply with Paragraph 13.b. if
10 the Oxy-fuel Furnace is constructed. If the Oxy-fuel Furnace is not constructed, the initial
11 compliance testing shall take place by September 30, 2007. Continuous emissions monitoring
12 shall comply with Paragraph 13.c.

13 b. The ESP shall control particulate emissions from Furnace #1 as
14 specified in Paragraph 12.c. Initial compliance testing shall comply with Paragraph 13.b. if the
15 Oxy-fuel Furnace is constructed. If the Oxy-fuel Furnace is not constructed, the initial
16 compliance testing shall take place by September 30, 2007. Monitoring of the ESP shall comply
17 with the requirements of 40 C.F.R. Part 64.

18 c. The scrubber and ESP shall be installed and operating to control
19 SO_x and particulate emissions from Furnace #1 by March 1, 2007.

20 d. In implementing the SEP, Defendant shall spend not less than
21 \$1,080,000 in eligible SEP Project Costs for the scrubber and ESP for Furnace #1. If SGCI has
22 installed the scrubber and ESP on both Furnace #1 and the Oxy-fuel Furnace, SGCI shall
23 multiply the total Project Costs for the scrubber and ESP for both furnaces by a factor of .24 in
24 order to: (1) allocate a portion of the total Project Costs to Furnace #1, and (2) determine the
25 eligible SEP Project Costs. Eligible SEP Project Costs do not include costs allocated to
26 controlling SO_x and particulate emissions from the Oxy-fuel Furnace. If the Oxy-fuel Furnace is
27 not constructed, SGCI shall use the total Project Costs for the scrubber and ESP for Furnace #1
28 to determine the eligible SEP Project Costs.

e. Emission Reduction Credits.

i. No later than 180 days after installation of the scrubber and ESP on Furnace #1, SGCI shall apply to SJVUAPCD for ERCs based on the reduction of emissions resulting from installation and operation of the scrubber and ESP on Furnace #1. SGCI shall take all actions necessary to convert such emission reductions to ERCs.

ii. Within ten days after submitting the ERC application, SGCI shall provide a copy of the application to EPA pursuant to Section XIV (Notices) of this Consent Decree. SGCI shall provide a copy to EPA pursuant to Section XIV (Notices) of this Consent Decree of any other correspondence (sent or received by Defendant) with The Environmental Resources Trust, Inc. ("ERT") or any government agencies relating to ERCs from this SEP within ten days after sending or receiving the correspondence.

iii. If SGCI receives any ERCs from emission reductions associated with the operation of the scrubber and ESP required by Paragraph 17 of this Consent Decree, SGCI shall transfer ownership of those ERCs to ERT in Washington, D.C. by following the procedures identified in Appendix A to this Consent Decree, which is hereby incorporated as part of this Consent Decree.

iv. If SGCI publicizes the transfer of ERCs to ERT, it shall include the following language: "This transfer of Emission Reduction Credits was undertaken in connection with the settlement of an enforcement action, United States v. Saint-Gobain Containers, Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

f. If Defendant decides to halt or abandon work on the SEP, Defendant shall notify EPA and the United States of its decision pursuant to Section XIV (Notices) of this Consent Decree. The notification shall be postmarked no later than 10 days after such decision and shall state the date that Defendant halted or abandoned work. Defendant's failure to complete the SEP shall be subject to stipulated penalties as provided in Paragraph 37. Defendant is liable for stipulated penalties under Paragraph 37.d. only if it failed to meet an applicable milestone under Paragraph 17 before it submitted notification to EPA and

1 the United States under this Paragraph 17.f.

2 18. With regard to the SEP, Defendant certifies the truth and accuracy of each
3 of the following:

4 a. that all cost information provided to EPA in connection with
5 EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs
6 necessary to implement the SEP;

7 b. that, as of the date of executing this Decree, Defendant is not
8 required to perform or develop the SEP by any federal, state, or local law or regulation and is not
9 required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in
10 any other action in any forum;

11 c. that the SEP is not a project that Defendant was planning or
12 intending to construct, perform, or implement other than in settlement of the claims resolved in
13 this Decree;

14 d. that Defendant has not received, and is not negotiating to receive,
15 credit for the SEP in any other enforcement action; and

16 e. that Defendant will not receive any reimbursement for any portion
17 of the SEP from any other person.

18 19. SEP Completion Report. No later than June 30, 2007, Defendant shall
19 submit a SEP Completion Report to the United States, in accordance with Section XIV (Notices)
20 of this Consent Decree. The SEP Completion Report shall contain the following information:

21 (1) a detailed description of the SEP as implemented;

22 (2) a description of any problems encountered in completing the SEP
23 and the solutions thereto;

24 (3) an itemized list of all eligible SEP Project Costs;

25 (4) certification that the SEP has been fully implemented pursuant to
26 the provisions of this Decree; and

27 (5) a description of the environmental and public health benefits
28 resulting from implementation of the SEP (with a quantification of the benefits and pollutant

1 reductions, if feasible).

2 20. EPA may, in its sole discretion, require information in addition to that
3 described in the preceding Paragraph, in order to determine the adequacy of SEP completion or
4 eligibility of SEP Project Costs, and Defendant shall use its best efforts to provide such
5 information.

6 21. After receiving the SEP Completion Report, the United States shall notify
7 Defendant whether or not Defendant has satisfactorily completed the SEP. If the SEP has not
8 been satisfactorily completed in accordance with the requirements of this Consent Decree, or if
9 the amount expended on performance of the SEP is less than the amount set forth in Paragraph
10 17, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

11 22. Disputes concerning the satisfactory performance of the SEP and the
12 amount of eligible SEP Project Costs may be resolved under Section X (Dispute Resolution) of
13 this Decree. No other disputes arising under this Section shall be subject to Dispute Resolution.

14 23. Each submission required under this Section shall be signed by an official
15 with knowledge of the SEP and shall bear the certification language set forth in Paragraph 27,
16 below.

17 24. Any public statement, oral or written, in print, film, or other media, made
18 by Defendant making reference to the SEP under this Decree shall include the following
19 language: "This project was undertaken in connection with the settlement of an enforcement
20 action, United States v. Saint-Gobain Containers, Inc., taken on behalf of the U.S. Environmental
21 Protection Agency under the Clean Air Act."

22 VII. REPORTING REQUIREMENTS

23 25. Defendant shall submit the following reports:

24 a. Within 30 days after the end of each calendar-year quarter (*i.e.*, by
25 April 30, July 30, October 30, and January 30) after the Effective Date until termination of this
26 Decree pursuant to Section XVIII, Defendant shall submit to EPA a quarterly report for the
27 preceding quarter that shall include the status of any construction or compliance measures (e.g.,
28 permitting process, anticipated start-up of operation, testing, etc.); completion of milestones;

1 problems encountered or anticipated, together with implemented or proposed solutions; status of
2 permit applications; reports to the District; and a discussion of Defendant's progress in satisfying
3 its obligations in connection with the SEP under Section VI of this Decree including, at a
4 minimum, a narrative description of activities undertaken and compliance with the schedules or
5 milestones set forth in the Decree.

6 b. Report of Operating Logs. Until termination of this Consent
7 Decree, a copy of the operating logs, including all electronic files, for the Oxy-fuel Furnace
8 maintained pursuant to Paragraph 14 shall be submitted to the District and EPA on an annual
9 basis on March 1 each year pursuant to Section XIV (Notices) of this Consent Decree.

10 c. Report of Costs. Within 120 days of completing construction of
11 the Oxy-fuel Furnace, SGCI shall report to EPA the Project Costs separately for the (1) Fused
12 Cast Crown; and (2) scrubber and ESP. This report shall include detailed supporting
13 documentation of those costs such as invoices from vendors and other internal accounting
14 records relevant to the costs incurred.

15 d. Defendant shall notify the United States in writing, within ten
16 working days of the day Defendant first becomes aware of a violation or a potential violation of
17 any requirement of this Consent Decree, and shall identify its likely duration, with an explanation
18 of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or
19 minimize such violation. If the cause of a violation cannot be fully explained at the time the
20 report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the
21 violation and shall then submit an amendment to the report, including a full explanation of the
22 cause of the violation, within 30 days of the day Defendant becomes aware of the cause of the
23 violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its
24 obligation to provide the notice required by Section IX (Force Majeure) of this Consent Decree.

25 26. All reports shall be submitted to the persons designated in Section XIV
26 (Notices) of this Consent Decree.

27 27. Each report submitted by Defendant under this Section shall be signed by
28 an official of the submitting party and include the following certification:

1 I certify under penalty of law that I have examined and am familiar
2 with the information submitted in this document and all attach-
3 ments and that this document and its attachments were prepared
4 either by me personally or under my direction or supervision in a
5 manner designed to ensure that qualified and knowledgeable
6 personnel properly gather and present the information contained
7 therein. I further certify, based on my personal knowledge or on
my inquiry of those individuals immediately responsible for
obtaining the information, that the information is true, accurate and
complete. I am aware that there are significant penalties for
submitting false information, including the possibility of fines and
imprisonment for knowingly and willfully submitting a materially
false statement.

8 This certification requirement does not apply to emergency or similar notifications where
9 compliance would be impractical.

10 28. The reporting requirements of this Consent Decree do not relieve
11 Defendant of any reporting obligations required by the Act or implementing regulations, or by
12 any other federal, state, or local law, regulation, permit, or other requirement.

13 29. Any information provided pursuant to this Consent Decree may be used by
14 the United States in any proceeding to enforce the provisions of this Consent Decree and as
15 otherwise permitted by law.

16 VIII. STIPULATED PENALTIES

17 30. If Defendant fails to pay the civil penalty required to be paid under Section
18 IV (Civil Penalty) of this Decree when due, Defendant shall pay a Stipulated Penalty of \$5,000
19 per day for each day that the payment is late. Late payment of the civil penalty shall be made in
20 accordance with Section IV, Paragraph 9, above. Stipulated Penalties shall be paid in accordance
21 with Section VIII, Paragraph 41, below. All transmittal correspondence shall state that any such
22 payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties
23 for late payment, as applicable, and shall include the identifying information set forth in
24 Paragraph 9, above.

25 31. Defendant shall be liable for Stipulated Penalties to the United States for
26 violations of this Consent Decree as specified below, unless excused under Section IX (Force
27 Majeure). A violation includes failing to perform any obligation required by the terms of this
28 Decree, including any work plan or schedule approved under this Decree, according to all

applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

32. Emissions Limits. The following Stipulated Penalties shall accrue per violation per day for each violation of a requirement of Paragraph 12.a.i., 12.b., 12.c.i., and 12.g.i., and Paragraph 15.a. and 15.b., above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$3,500	15th through 30th day
\$10,000	31st day and beyond

For the purpose of determining Stipulated Penalties for the emissions limits only, days of noncompliance are cumulative from the Effective Date and need not be continuous.

33. Compliance Milestones.

a. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$3,500	15th through 30th day
\$10,000	31st day and beyond

b. The applicable compliance milestones are as follows:

<u>Requirement</u>	<u>Paragraph</u>
Termination of operation of Furnace #2	11.a
Submittal of permit application	11.b.i
Appeal of deficient permit	11.b.iv
Commence construction	11.b.v
Begin operation of Oxy-fuel Furnace	11.b.vi

34. Reporting and Recordkeeping Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting and recordkeeping requirements of Sections V and VII of this Consent Decree:

1	<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
---	--------------------------------------	--------------------------------

2	\$500	1st through 30th day
---	-------	----------------------

3	\$750	31st day and beyond
---	-------	---------------------

4 No Stipulated Penalties shall accrue under Paragraph 34 for the first 90 days after the Effective
5 Date of this Consent Decree.

6 35. Oxy-fuel Furnace; Installation of Fused Cast Crown.

7 a. If Defendant decides to Cease Operations and not to construct and
8 operate the Oxy-fuel Furnace pursuant to Paragraph 11.c., Defendant shall pay stipulated
9 penalties as follows:

10 i. If Defendant provides notice that it will Cease Operations
11 in calendar year 2005, Defendant shall pay a base stipulated penalty of \$1,381,000 for past
12 operations. In addition, Defendant shall pay:

$$\frac{\$1,400,000 \times \text{Number of Months of Operation in 2005}}{12}$$

15 ii. If Defendant provides notice that it will Cease Operations
16 in calendar year 2006, Defendant shall pay a base stipulated penalty of \$2,781,000 for past
17 operations. In addition, Defendant shall pay:

$$\frac{\$1,424,000 \times \text{Number of Months of Operation in 2006}}{12}$$

20 b. If Defendant does not install the Fused Cast Crown on the Oxy-fuel
21 Furnace, Defendant shall pay a Stipulated Penalty of \$535,000.

22 36. For Defendant's failure to comply with any other requirement of Section V
23 of this Consent Decree not specifically referenced in Paragraphs 32 - 35 above:

24	<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
----	--------------------------------------	--------------------------------

25	\$1,000	1st through 14th day
----	---------	----------------------

26	\$1,500	15th through 30th day
----	---------	-----------------------

27	\$2,000	31st day and beyond
----	---------	---------------------

28

37. SEP Compliance.

a. If Defendant has spent less than the amount set forth in Paragraph 17.d, above, in implementation of the SEP, Defendant shall pay a Stipulated Penalty equal to the difference between the amount of total eligible SEP Project Costs incurred by Defendant and the amount set forth in Paragraph 17.d.

b. If Defendant has completed the SEP, but the SEP is not satisfactory, Defendant shall pay a Stipulated Penalty of \$133,000 in addition to any penalty required under Subparagraph a, above.

c. If Defendant halts or abandons work on the SEP, the Defendant shall pay a Stipulated Penalty of \$200,000 in addition to any penalty required under Subparagraph a, above, and any penalties owing under Subparagraph d, below, for milestones missed up to the time that the penalty under this Subparagraph accrues. The penalty under this Subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

d. If Defendant fails to comply with the schedule in Section VI or Appendix A of this Consent Decree for implementing the SEP, Defendant shall pay Stipulated Penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

Subject to Paragraph 37.a - c, above, such penalties shall accrue from the date Defendant was required to meet each such milestone, until compliance with the milestone is achieved.

38. Subject to the provisions of Paragraph 37.a - c, above, Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated

1 Penalty within 30 days of receiving the United States' written demand.

2 39. The United States may, in the unreviewable exercise of its discretion,
3 reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

4 40. Stipulated Penalties shall continue to accrue as provided in Paragraph 38,
5 above, during any Dispute Resolution, with interest on accrued penalties payable and calculated
6 at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need
7 not be paid until the following:

8 a. If the dispute is resolved by agreement or by a decision of EPA
9 that is not appealed to the Court, Defendant shall pay accrued penalties agreed upon or
10 determined to be owing, together with interest, to the United States within 30 days of the
11 effective date of the agreement or the receipt of EPA's decision or order.

12 b. If the dispute is appealed to the Court and the United States
13 prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to
14 be owing, together with interest, within 60 days of receiving the Court's decision or order, except
15 as provided in Subparagraph c, below.

16 c. If any Party appeals the District Court's decision, Defendant shall
17 pay all accrued penalties determined to be owing by the appellate court, together with interest,
18 within 15 days of receiving the final appellate court decision.

19 41. Defendant shall, as directed by the United States in its demand, pay
20 Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph
21 9, above or by certified or cashier's check in the amount due, payable to the "U.S. Department of
22 Justice," referencing DOJ No. 90-5-2-1-06982, and delivered to:

23 United States Attorney's Office
24 Eastern District of California
25 Attn: Tina Baca, Financial Litigation Unit
501 "I" Street, Suite 10-100
Sacramento, CA 95814

26 42. Defendant shall not deduct Stipulated Penalties paid under this Section in
27 calculating its federal income tax.

28 43. If Defendant fails to pay Stipulated Penalties according to the terms of this

1 Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in
2 28 U.S.C. § 1961, accruing as of the date payment became due.

3 44. Subject to the provisions of Section XII (Effect of Settlement/Reservation
4 of Rights) of this Consent Decree, the Stipulated Penalties provided for in this Consent Decree
5 shall be in addition to any other rights, remedies, or sanctions available to the United States for
6 Defendant's violation of this Consent Decree or applicable law. Where a violation of this
7 Consent Decree is also a violation of the Act, Defendant shall be allowed a credit, for any
8 Stipulated Penalties paid, against any statutory penalties imposed for such violation.

9 IX. FORCE MAJEURE

10 45. For purposes of this Consent Decree, a "Force Majeure Event" is any
11 event arising from causes beyond the control of Defendant, its contractors, or any entity
12 controlled by Defendant that delays the performance of any obligation under this Consent Decree
13 and that cannot be overcome by Defendant's diligent and timely efforts. "Diligent and timely
14 efforts" include anticipating any potential Force Majeure Event and addressing the effects of any
15 such event (a) as it is occurring and (b) after it has occurred, such that delay is minimized to the
16 extent possible. "Force Majeure" does not include Defendant's financial inability to perform any
17 obligation under this Consent Decree.

18 46. Defendant shall provide notice orally or by electronic or facsimile
19 transmission to the United States as soon as possible, but not later than 72 hours after the time
20 Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed
21 Force Majeure Event. Defendant shall also provide written notice to the United States, as
22 provided in Section XIV (Notices) of this Consent Decree, within seven days of the time
23 Defendant first knew of, or by the exercise of due diligence, should have known of, the event.
24 The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and
25 proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and
26 Defendant's rationale for attributing any delay to a Force Majeure Event. Failure to provide oral
27 and written notice as required by this Paragraph shall preclude Defendant from asserting any
28 claim of force majeure, unless such failure was due to a Force Majeure Event.

47. If the United States agrees that a Force Majeure Event has occurred, the time for Defendant to perform the activity delayed by the Force Majeure Event shall be extended for the time period of the delay attributable to the Force Majeure Event. An extension of time to perform the obligations affected by a Force Majeure Event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVIII (Modification) of this Consent Decree.

48. If the United States does not agree that a Force Majeure Event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed Force Majeure Event is a Force Majeure Event, that Defendant gave the notice required by Paragraph 46, that the Force Majeure Event caused any delay Defendant claims was attributable to that event, and that Defendant exercised diligent and timely efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that Defendant has not disputed in accordance with this Section.

50. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the United States receives a written Notice of Dispute from Defendant. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the United States receives the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall

1 be considered binding unless, within 20 days after receiving written notice from the United States
2 terminating informal negotiations, Defendant invokes formal dispute resolution procedures as set
3 forth below.

4 51. Formal Dispute Resolution. Defendant shall invoke formal dispute resolu-
5 tion procedures, within the time period provided in the preceding Paragraph, by serving on the
6 United States a written Statement of Position regarding the matter in dispute. The Statement of
7 Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion
8 supporting Defendant's position and any supporting documentation relied upon by Defendant.

9 52. The United States shall serve its Statement of Position within 30 days of
10 receipt of Defendant's Statement of Position. The United States' Statement of Position shall
11 include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting
12 that position and any supporting documentation relied upon by the United States. The United
13 States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for
14 judicial review of the dispute in accordance with the following Paragraph.

15 53. Defendant may seek judicial review of the dispute by filing with the Court
16 and serving on the United States, in accordance with Section XIV (Notices) of this Consent
17 Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within
18 10 days of receipt of the United States' Statement of Position pursuant to the preceding
19 Paragraph. The motion shall contain a written statement of Defendant's position on the matter in
20 dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set
21 forth the relief requested and any schedule within which the dispute must be resolved for orderly
22 implementation of the Consent Decree.

23 54. The United States shall respond to Defendant's motion within the time
24 period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the
25 extent permitted by the Local Rules.

26 55. In any dispute brought under Paragraph 53, Defendant shall bear the
27 burden of demonstrating that its position clearly complies with this Consent Decree and the Act
28 and that Defendant is entitled to relief under applicable law. The United States reserves the right

1 to argue that its position is reviewable only on the administrative record and must be upheld
2 unless arbitrary and capricious or otherwise not in accordance with law.

3 56. The invocation of dispute resolution procedures under this Section shall
4 not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this
5 Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties
6 with respect to the disputed matter shall continue to accrue from the first day of noncompliance,
7 but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40,
8 above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed
9 and paid as provided in Section VIII (Stipulated Penalties).

10 XI. INFORMATION COLLECTION AND RETENTION

11 57. The United States and its representatives, including attorneys, contractors,
12 and consultants, shall have the right of entry into the Facility, at all reasonable times, upon
13 presentation of credentials, to:

14 (1) monitor the progress of activities required under this Consent
15 Decree;

16 (2) verify any data or information submitted to the United States in
17 accordance with the terms of this Consent Decree;

18 (3) obtain samples and, upon request, splits of any samples taken by
19 Defendant or its representatives, contractors, or consultants;

20 (4) obtain documentary evidence, including photographs and similar
21 data; and

22 (5) assess Defendant's compliance with this Consent Decree.

23 58. Upon request, Defendant shall provide EPA or its authorized
24 representatives splits of any samples taken by Defendant. Upon request, EPA shall provide
25 Defendant splits of any samples taken by EPA.

26 59. Until the termination of this Consent Decree as specified in Paragraph 75,
27 Defendant shall retain, and shall instruct its contractors and agents to preserve, copies of all
28 documents, records, or other information (including documents, records, or other information in

1 electronic form) in its or its contractors' or agents' possession or control, or that come into its or
2 its contractors' or agents' possession, and that relate to Defendant's performance of its
3 obligations under this Consent Decree. This information-retention requirement shall apply
4 regardless of any contrary corporate or institutional policies or procedures. At any time during
5 this information-retention period, the United States may request copies of any documents,
6 records, or other information required to be maintained under this Paragraph.

7 60. At the conclusion of the information-retention period provided in the
8 preceding Paragraph (i.e., upon the termination of this Consent Decree), Defendant shall notify
9 the United States at least 90 days prior to the destruction of any documents, records, or other
10 information subject to the requirements of the preceding Paragraph, and, upon request by the
11 United States, Defendant shall deliver any such documents, records, or other information to EPA.
12 Defendant may assert that certain documents, records, or other information are privileged under
13 the attorney-client privilege or any other privilege recognized by federal law. If Defendant
14 asserts such a privilege, it shall provide the following: (1) the title of the document, record, or
15 information; (2) the date of the document, record, or information; (3) the name and title of each
16 author of the document, record, or information; (4) the name and title of each addressee and
17 recipient; (5) a description of the subject of the document, record, or information; and (6) the
18 privilege asserted by Defendant. However, no documents, records, or other information created
19 or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of
20 privilege.

21 61. Defendant may also assert that information required to be provided under
22 this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2.
23 As to any information that Defendant seeks to protect as CBI, Defendant shall follow the
24 procedures set forth in 40 C.F.R. Part 2.

25 62. This Consent Decree in no way limits or affects any right of entry and
26 inspection, or any right to obtain information, held by the United States pursuant to applicable
27 federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of
28 Defendant to maintain documents, records, or other information imposed by applicable federal or

1 state laws, regulations, or permits.

2 XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

3 63. This Consent Decree resolves the civil claims of the United States for the
4 violations alleged in the Complaint filed in this action through the date of lodging or alleged in
5 the following Notices of Violation: Docket Nos. R9-99-13, R9-99-14, R9-02-07, R9-02-18, and
6 R9-03-08.

7 64. The United States reserves all legal and equitable remedies available to
8 enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 63. This
9 Consent Decree shall not be construed to limit the rights of the United States to obtain penalties
10 or injunctive relief under the Act or implementing regulations, or under other federal laws,
11 regulations, or permit conditions, except as expressly specified in Paragraph 63. The United
12 States further reserves all legal and equitable remedies to address any imminent and substantial
13 endangerment to the public health or welfare or the environment arising at, or posed by,
14 Defendant's Facility, whether related to the violations addressed in this Consent Decree or
15 otherwise.

16 65. This Consent Decree is not a permit, or a modification of any permit,
17 under any federal, State, or local laws or regulations. Defendant is responsible for achieving and
18 maintaining compliance with all applicable federal, State, and local laws, regulations, and
19 permits; and Defendant's compliance with this Consent Decree shall be no defense to any action
20 commenced pursuant to any such laws, regulations, or permits. The United States does not, by
21 its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's
22 compliance with any aspect of this Consent Decree will result in compliance with provisions of
23 the Act, 42 U.S.C. §§ 7401 - 7671q, or with any other provisions of federal, State, or local laws,
24 regulations, or permits.

25 66. This Consent Decree does not limit or affect the rights of Defendant or of
26 the United States against any third party, not a party to this Consent Decree, nor does it limit the
27 rights of any third party, not a party to this Consent Decree, against Defendant, except as
28 otherwise provided by law.

67. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

XIII. COSTS

68. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendant.

XIV. NOTICES

69. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and shall be sent by certified mail, express mail, or similar overnight mail delivery with return receipt requested and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-06982

and

Chief, Environmental Enforcement Section
Attn: DOJ # 90-5-2-1-06982 (Mullaney)
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

and

Kara Christenson, ORC-2
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

To EPA:

Director, Air Division (AIR-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
Attention: Cyntia Steiner

To Defendant:

Saint-Gobain Containers, Inc.
1509 South Macedonia Avenue
Muncie, IN 47307
ATTN: President and CEO

and

Saint-Gobain Containers, Inc.
1509 South Macedonia Avenue
Muncie, IN 47307
ATTN: Sr. VP and General Counsel

and

Saint-Gobain Containers, Inc.
1509 South Macedonia Avenue
Muncie, IN 47307
ATTN: VP - Environmental, Health and Safety

70. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

71. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

72. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

73. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

74. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVIII. TERMINATION

75. After Defendant has complied with all requirements relating to Paragraphs 5 (if applicable), 11, 12, 13.a., 13.b., and 15, and Section VI of this Consent Decree, and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

76. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

77. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 51 of Section X, until 60 days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

78. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

79. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice or her delegate certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

1 80. This Consent Decree may be signed in counterparts, and its validity shall
2 not be challenged on that basis.

3 81. Defendant agrees not to oppose entry of this Consent Decree by the Court
4 or to challenge any provision of the Decree, unless the United States has notified Defendant in
5 writing that it no longer supports entry of the Decree.

6 82. Defendant agrees to accept service of process by mail with respect to all
7 matters arising under or relating to this Consent Decree and to waive the formal service
8 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any
9 applicable Local Rules of this Court including, but not limited to, service of a summons.

10 XXI. INTEGRATION

11 83. This Consent Decree constitutes the final, complete, and exclusive
12 agreement and understanding between the Parties with respect to the settlement embodied in the
13 Decree and supersedes all prior agreements and understandings, whether oral or written,
14 concerning the settlement embodied herein. No other document, nor any representation,
15 inducement, agreement, understanding, or promise, constitutes any part of this Decree or the
16 settlement it represents, nor shall it be used in construing the terms of this Decree.

17 XXII. FINAL JUDGMENT

18 84. Upon approval and entry of this Consent Decree by the Court, this Consent
19 Decree shall constitute a final judgment of the Court as to the United States and Defendant. The
20 Court finds that there is no just reason for delay and therefore enters this judgment as a final
21 judgment under Fed. R. Civ. P. 54 and 58.

22 XXIII. APPENDICES

23 85. The following appendices are attached to and incorporated into this
24 Consent Decree:

1 Appendix A, which is entitled "Instructions for Transferring Emission Reduction Credits
2 to The Environmental Resources Trust, Inc;" and
3 Appendix B, regarding contracts between SGCI and a third party contractor.
4

5 **ORDER**

6 IT IS SO ORDERED:

7
8 _____ROBERT E. COYLE_____

9 United States District Judge

10 DATED: ____June 20, 2005____
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 FOR PLAINTIFF UNITED STATES OF AMERICA:

2

3 Dated: _____

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

6

7 Dated: _____

ROBERT D. MULLANEY
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

THOMAS V. SKINNER
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Mail Code 2201A
Washington, D.C. 20460

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection
Agency, Region 9
San Francisco, CA

OF COUNSEL:

KARA CHRISTENSON
Senior Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 FOR DEFENDANT SAINT-GOBAIN CONTAINERS, INC.:

2

3 Dated: _____

4

JEFF FORGANG
Vice President - Environmental, Health & Safety
Saint-Gobain Containers, Inc.
1509 South Macedonia Avenue
Muncie, IN 47307

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

APPENDIX A

**INSTRUCTIONS FOR TRANSFERRING EMISSION REDUCTION CREDITS
TO THE ENVIRONMENTAL RESOURCES TRUST, INC.**

1. Within 30 days after receiving any Emission Reduction Credits (“ERCs”) that are required to be transferred to The Environmental Resources Trust, Inc. (“ERT”) by Paragraph 17.e. of this Consent Decree, Defendant shall request that the San Joaquin Valley Unified Air Pollution Control District (“SJVUAPCD”) transfer ownership of the ERCs to ERT.

2. Title to the ERCs shall be transferred to the following entity:

The Environmental Resources Trust, Inc.
1612 K Street, N.W., Suite 1400
Washington, D.C. 20006
Phone: (202) 785-8577
EIN: 31-1475919

3. For all ERCs required to be transferred to ERT, Defendant shall request SJVUAPCD to issue original ERC certificates in ERT’s name and after receipt shall physically transfer those certificates to ERT accompanied by a letter that assigns all rights and title to the ERCs to ERT. If after good faith efforts, Defendant is unable to obtain original ERC certificates in ERT’s name, Defendant shall: (1) endorse the ERC certificates to ERT; (2) transfer possession of the endorsed ERC certificates to ERT; (3) assign all rights and title to the ERCs to ERT; and (4) request that SJVUAPCD register the ERCs in ERT’s name. Defendant shall pay all costs and fees, if any, associated with such assignment, transfer, and registration.

4. When Defendant physically transfers ERC certificates to ERT or otherwise notifies ERT of the transfer of ERCs, Defendant shall provide the following notification:

“These Emission Reduction Credits (“ERCs”) are being transferred to The Environmental Resources Trust, Inc. (“ERT”) subject to the following restrictions: ERT shall retire or hold these ERCs in order to achieve a permanent improvement in air quality in the San Joaquin Valley Air Basin. These restrictions shall apply in perpetuity to all ERCs acquired from Defendant and held by ERT.”

5. Any correspondence between Defendant and ERT shall refer to this Consent Decree, its date of entry, the case name of United States v. Saint-Gobain Containers, Inc., the Case Number and judicial District (E.D. Cal.), and DOJ# 90-5-2-1-06982.

6. Defendant shall provide the United States and EPA, in accordance with Section

1 XIV (Notices) of this Consent Decree, with copies of all correspondence sent or received by
2 Defendant related to the transfer of ERCs to ERT within 10 days after sending or receiving the
3 correspondence. This notice requirement applies to all correspondence with any government
4 entity or with ERT.

APPENDIX B

The following provision shall be included in any contract between SGCI and any third party contractor covering any on-site repair, installation, construction, rebuilding or maintenance work required under this Consent Decree:

Contractor acknowledges that it has received a copy of the Consent Decree in United States of America v. Saint-Gobain Containers, Inc., Civil No. _____, and understands that its work under this contract is undertaken pursuant to the provisions of that Consent Decree.